

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

JOHN C.

Claimant,

vs.

HARBOR REGIONAL CENTER,

Service Agency.

OAH No. L 2006070498

DECISION

Sandra L. Hitt, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter on September 13, 2006, at Torrance, California.

Claimant's mother, Mrs. L., represented Claimant, John C.,¹ hereinafter referred to as John or Claimant.

Brian Lockhart, Harbor Regional Center Program Manager, represented Harbor Regional Center (HRC or Regional Center).

The parties agreed to the admission of each other's documentary evidence except as follows: HRC's Exhibit I is an excerpt from the Lanterman Act.² The ALJ took official notice of the Lanterman Act. HRC's exhibit J was admitted as administrative hearsay. Claimant's Exhibits 23 and 24 were withdrawn. Claimant's Exhibits 25 through 28 were admitted as administrative hearsay. HRC's opening brief was marked by the ALJ as Exhibit F for identification only. Oral and documentary evidence having been received and the matter having been submitted on September 13, 2006, the ALJ issues the following Decision.

¹ John's last name and that of his parents will be represented by initials herein, to protect the privacy of the minor and his family.

² The Lanterman Act is codified at Welfare and Institutions Code section 4500 et seq.

ISSUES

1. Whether the Regional Center should be required to fund up to 40 hours of in-home applied behavioral analysis (ABA) therapy for John, plus all related training and supervision, by the Lovaas Institute.
2. Whether the Regional Center should reimburse John's parents for money they have expended to fund John's Lovaas provided ABA therapy in 2006.³

FINDINGS OF FACT

1. John is a four year and 10 month old child with a diagnosis of autism and possible mild mental retardation. He is a client of HRC. In the 2005-2006 school year, John attended Susan Yee's class at the Tincher School in Long Beach Unified School District (LBUSD). In February of 2006, John's family had an Individual Education Plan (IEP) meeting with LBUSD. A representative of HRC attended this IEP meeting with Claimant's mother. At this meeting, for the 2006-2007 school year, LBUSD offered John 20 hours of instruction in a special pre-kindergarten/kindergarten (pre-kk) autism class at the Holmes school. This class was to include general education children as well. Additionally, LBUSD offered John 10 hours of in-home ABA therapy plus one half-hour of speech therapy five times per week, one half-hour of occupational therapy once per week in the classroom, and 45 minutes of occupational therapy once per week at the clinic. LBUSD also offered to provide John with an instructional aide to assist him at Tincher on a temporary basis. John's teacher, Ms. Yee, had requested the assistance of an instructional aide to support John. It was determined that the aide would be trained by the school district and the situation would be evaluated after 60 days. If John were making expected progress with the aide, the aide's time would be "faded" to lessen the risk that John would become overly dependent on the aide.

At the time of the IEP meeting, John's parents wanted to remove him from the school program and have 40 hours of ABA therapy given to John at home. Ms. Yee disagreed with this position because John was making progress in school. She offered the family an extended school day with one-on-one training for John. John's speech and language therapist also thought that John should stay in the school program, as John was making progress. John's parents were not entirely happy with these arrangements, but agreed to the February 2006 IEP. John received extended school days. Mrs. L. believed that John would have a one-on-one ABA aide assigned to him in February of 2006. However, this did not occur. John's mother visited the school in March of 2006 to observe her son. She saw her son playing with a trash can on the playground, and no aide was shadowing him. When she

³ HRC argued that the issue of reimbursement was not within the four corners of Claimant's Fair Hearing Request; however, in his Fair Hearing Request, Claimant requested that the Regional Center fund a reasonable portion of the *entire* cost of his behavioral program (emphasis added); this may be reasonably interpreted to include the amount that the parents have already expended.

asked John's teacher about this, the teacher said she knew nothing about a one-on-one aide for John, but rather, one of the general classrooms aides had been assigned to assist John. It is unclear from the February IEP whether the assignment of a one-on-one ABA aide dedicated only to John had been promised.

2. Mrs. L. was also unhappy with some of the ABA therapy LBUSD was providing to John at home. She did not like the way the staff implemented the potty training program, which called for a potty check every 20 minutes. Ms. L. thought that 20 minute intervals were too frequent. As a result, the potty training program was discontinued. Mrs. L. also had complaints about John's extended school day. She had believed that all of John's extended school day would be spent in one-on-one instruction with Ms. Yee; however, sometimes John's extended school day would include speech and language therapy, or other activities wherein John worked with someone other than Ms. Yee, or Ms. Yee's attention was not solely devoted to John. The parents wanted John to continue in Ms. Yee's class for the 2006-2007 school year. However, this placement was not available to John, as he was almost five years old, and had been in the class for two years.

Mrs. L. testified that she likes her HRC coordinator very much, but she was unhappy that the coordinator did not advocate more strongly for LBUSD to provide more service hours for John. The Regional Center agreed to supplement John's ABA program by paying for parent training and also to provide 10 additional hours of ABA therapy per week, bringing John's program hours to over 40 per week. John's parents did not take advantage of the parent training as they were not comfortable with the person who came to their home to provide the training.

3. In January of 2006, John's parents engaged clinical psychologist, Avazeh Chehrazai, an expert in the field of autism, to evaluate John. Dr. Chehrazai issued her report on January 27, 2006. In her report, Dr. Chehrazai recommended that John receive 40 hours of ABA training per week, with most of the training provided in the home. She indicated that John needed to develop certain skills before he could fully benefit from a classroom environment; according to the report, John needs to "learn how to learn." John's parents removed him from school in June of 2006. On June 21, 2006, John began a program of in-home intensive behavioral intervention (IBI) therapy through the Lovaas Institute. IBI therapy is a form of ABA. Claimant asked LBUSD to pay for this program; LBUSD refused. Claimant then asked HRC to pay for this program; HRC refused. Claimant then submitted a request to HRC for a fair hearing. Claimant has not asked LBUSD for alternative dispute resolution (ADR) or a due process hearing.

4. The Lovaas program in which John enrolled is a "workshop model." In this model, the parents find suitable aides to work with their children, and the parents are responsible for paying these aides. Lovaas provides an individualized program for the child, along with training and supervision. In a "clinical model," the program vendor (in this case, Lovaas) provides the staff as well. The parents pay the program vendor. HRC prefers the clinical model over the "workshop model." HRC believes a clinical model program is more effective than a workshop model program. One of the problems that HRC points out with

the workshop model is that often parents cannot maintain adequate staffing. Claimant's situation bears this out. Mrs. L. is currently providing all of Claimant's ABA therapy with supervision from the Lovaas Institute; she is trying to provide him with 30 hours per week. Although Dr. Cherhazi has recommended up to 40 hours per week of ABA therapy for John, this number of hours must be arrived at over time, as the child becomes used to handling longer periods of intense therapy. Mrs. L. admitted that she has had difficulty hiring ABA aides, although she also indicated that at some point she had decided to delay hiring anyone due to financial concerns. Mrs. L. considered a clinical model program at one time, calling Autism Spectrum Therapy (AST) to enquire about its services; however, no one ever returned her call, and Mrs. L. engaged the Lovaas Institute. Lovaas does not provide a "clinical model" program in Long Beach. Mrs. L. does not want to consider another program at this time, so impressed has she been with John's progress under Lovaas. Claimant currently is not receiving any in-home ABA therapy from LBUSD. LBUSD autism services supervisor, Coco Liu, testified that LBUSD stands ready to provide this service; however, Mrs. L. wants the Lovaas program.

5. LBUSD also expressed concerns over John's Lovaas directed program. Ms. Liu testified that because John has problems with generalization, the school provides him with a better learning environment. At school, he can generalize his behaviors with children as well as adults, and has opportunities to imitate other children, including general education children. For their part, John's parents feel that he is still not ready for the classroom, and that he has developed some negative behaviors through imitating other autistic children. In the year prior to John's receiving the Lovaas therapy, John had made some progress, but his parents believe he was not making sufficient progress. During the 2005-2006 school year, John met only half of his IEP goals; Mrs. L. had expected much more progress. John was not enrolled at the Holmes school for the 2006-2007 school year. Subsequent to removing John from school, Mrs. L. learned that the class John was to have been placed in at the Holmes school was not a pre-kk class, rather it was a K-1 class that included a mix of kindergarten and first grade. Mrs. L. had previously rejected an offer of such a class at another school because other children in the class were much bigger than her son. Claimant's family has experienced much frustration with LBUSD.

DISCUSSION AND CONCLUSIONS OF LAW

1. The Lanterman Developmental Disabilities Services Act (Lanterman Act) is a comprehensive statutory scheme designed to provide supports and services for persons with developmental disabilities.⁴ The Act has a two-fold purpose: (1) to prevent or minimize the institutionalization of developmentally disabled persons and their dislocation from family and community; and (2) to enable developmentally disabled persons to approximate the pattern of living of non-disabled persons of the same age and to lead more independent and productive lives in the community. (Welf. & Inst. Code, §§ 4501, 4509, 4685, 4750 & 4751; see generally *Association for Retarded Persons v. Department of Developmental Services*

⁴ The Lanterman Act is codified at Welfare and Institutions Code section 4500 et seq.

(1985) 38 Cal.3d 384, 388.) The Department of Developmental Services (DDS) is the state agency required to implement the Lanterman Act. It carries out that responsibility by delivering its services through the various Regional Centers located statewide.

[T]he Legislature has fashioned a system in which both state agencies and private entities have functions. Broadly, DDS, a state agency, “has jurisdiction over the execution of the laws relating to the care, custody, and treatment of developmentally disabled persons” (§4416), while “Regional Centers,” operated by private nonprofit community agencies under contract with DDS, are charged with providing developmentally disabled persons with “access to the facilities and services best suited to them throughout their lifetime” (§4620). (*Association of Retarded Persons, supra*, at p. 389.)

2. Welfare and Institutions Code section 4648, subdivision (b) requires the Regional Centers to advocate for the “civil, legal, and service rights of persons with developmental disabilities....” The Regional Center sent a representative with Claimant’s family to the IEP meeting in February; however, the family was not pleased with HRC’s advocacy at that meeting (Finding 1).

3. Under Welfare and Institutions Code section 4648, subdivision (a) (8), Regional Centers are prohibited from using their funds to supplant generic resources. However, generally, where a generic agency is required to provide services but fails or refuses to do so, such services must be provided by the Regional Center, as the payer of last resort. If the Regional Center believes that the generic source has failed to meet its obligation, the Regional Center must provide the services, and it is authorized to pursue reimbursement under Welfare and Institutions Code section 4659. The generic source in this instance, LBUSD, offered to provide 30 hours of ABA therapy, 20 hours in the classroom and 10 at home (Finding 1). Claimant has not asked LBUSD for ADR or a due process hearing (Finding 3).

While the Lanterman Act directs Regional Centers to provide or secure family support services that respect and support the decision making authority of the family (Welf. & Inst. Code § 4685, subdivision (b)), it does not guarantee families the right to a particular service vendor or a specific preferred program.

The parents want what they believe is the best therapy for their son. In pursuing this, they have experienced frustrations with LBUSD (Findings 2, 3, 4, and 5). The parents did not enroll John at the Holmes school for the 2006-2007 year, and the family is not taking advantage of the 10 hours per week of in-home ABA therapy offered by the school district for the 2006-2007 year, preferring instead, the Lovaas program (Finding 3). Mrs. L. testified that the Lovaas workshop model is “wonderful” and she believes her son is making good progress under this program (Finding 4). However, the family did not agree to even try a clinical-based program offered by a different provider, they did not take advantage of the parent training offered by HRC, and they did not request either ADR or a Due Process

hearing from LBUSD (Findings 2, 3, and 4). As Claimant has not sufficiently exhausted his generic resources, Claimant's request is premature. Under these circumstances, HRC is not obligated to fund a Lovaas Institute workshop model therapy program for Claimant at this time.

ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Claimant's claim for reimbursement is denied. Likewise, Claimant's request that HRC fund up to 40 hours per week of a Lovaas Institute "workshop model" ABA therapy program for John is denied.

Date: September 18, 2006

SANDRA L. HITT
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision. Both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.